IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4064 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAVINDRA KAUTIK PATIL

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

MR SUDHANSHU JOSHI ld. A.G.P. for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/12/1999

ORAL JUDGEMENT

1. The petitioner is a detenu who came to be detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (PASA Act for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat on 17-3-1999 in exercise of powers under Section 3(1) of the PASA Act.

1.1 The grounds of detention indicate that the detaining authority took into consideration, an offence registered against the petitioner under the Bombay Prohibition Act, so also the statements of two witnesses in respect of two unregistered offences, while passing

the order. The detaining authority after having been satisfied with the facts stated by the witnesses in respect of unregistered offences as correct and the fear expressed by these witnesses as genuine qua the petitioner decided to exercise powers under Section 9(2) of the PASA Act and maintained anonymity in respect of these two witnesses. The authority considered the possibility of resorting to less drastic remedies and came to the conclusion that in order to immediately prevent the petitioner from continuing his illegal and antisocial activities detention under PASA is the only remedy that can be resorted to.

2. The petitioner challenges the detention on various grounds. The first ground is that there is non application of mind by the detaining authority. The detaining authority in the grounds of detention has considered that resorting to cancellation of bail is not possible as it may take time. Another contention that is raised is that the case against the petitioner is of bootlegging in foreign made liquor and therefore there is no question of disturbance to any public order as it is not likely to affect public health. The last contention that is raised is the delay in passing of the order. It has been contended that the statements of two witnesses came to be recorded on 26th and 27th February 1999 and the order of detention was passed on 17th March 1999 after verifying the statements on 15th March 1999, therefore there is a delay of 17 days in passing the order.

2.1 None of the respondents have filed any affidavit in reply.

3. Mr. S.A.Shah learned advocate appearing for the petitioner submitted that the detaining authority has not taken into consideration that resorting to cancellation of bail was not an available alternative less drastic remedy since this could be availed only if the detenu has committed any breach of the condition imposed while admitting him to bail or his involvement in any other crime. Since only one case is registered and since it is not the case of the detaining authority that he has committed any breach of the conditions imposed by the court while admitting him to bail, there was no question of cancellation of bail and therefore the order suffers from the defect of non application of mind.

3.1. Mr. Shah submitted further that admittedly the petitioner is involved in foreign liquor as can be seen from the case registered against him, so also the

statements of the anonymous witnesses. Keeping in light the decision in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Another as reported in JT 1988(4) SC 703, it cannot be considered as affecting public health or public order, and therefore the order suffers from the defect of non application of mind. Lastly he submitted that the statement of two witnesses were recorded on 26th and 27th February 1999. The same were verified by the detaining authority on 15-3-1999 and the order was passed on 17-3-1999. There is a delay of about 17 days in passing the order which has not been explained by the detaining authority and therefore the petitioner may be allowed, on the grounds above.

4. Mr. Joshi, Learned A.G.P. had opposed this petition. He submitted that the detention is of an preventive nature unlike punitive and therefore the authority is not expected to wait till the petitioner involves himself into further offences. The over all activity which is reflected from the grounds of detention is considered by the detaining authority and the order is passed. He submitted that the consideration of ground of cancellation of bail is enough while considering less drastic remedy. Objective tests cannot be applied to such satisfaction arrived at by the detaining authority. It cannot be said that the ground that is stated in the grounds of detention while considering the possibility of resorting to cancellation of bail was not relevant and therefore the contention raised on behalf of the petitioner may not be accepted.

4.1 As regards public order, Mr. Joshi pressed into service the decision of the Apex Court in the case of Kanuji S. Zala v. State of Gujarat & Others 1999(2) GLH 415 and submitted that when the detaining authority was subjectively satisfied about the activity of the detenu being detrimental to public health it has to be accepted as such, because it is a subjective satisfaction of the detaining authority.

4.2 As regards delay, Mr. Joshi submitted that as such there is no delay at all in passing the order. He submitted that the statements of witnesses were recorded on 26th and 27th February 1999. The same were verified on 15-3-1999 and the order was passed on 17-3-1999. After the statements were recorded the sponsoring authority will be required to apply its mind, collect material and then forward the proposal to the detaining authority and thereafter the detaining authority will apply its mind. A lapse of about 16 to 17 days in

completing this procedure cannot be considered as inordinate delay and therefore the argument advanced on behalf of the petitioner may not be accepted. He however added that since delay is not inordinate, there is no need for explanation therefor.

5. Adverting to the rival contentions the court is first required to consider whether, consideration of less drastic remedy in form of cancellation of bail, by the detaining authority reflects non-application of mind. What is considered by the detaining authority in the grounds of detention can be translated as under:-

> "You are bailed out in the offence registered against you, shown in Annexure I. Considering this aspect if the procedure of cancelling the bail is adopted, it is likely to consume much time"

It is true that only one offence is registered against the petitioner detenu. It is also true that there is no material to indicate that any condition was imposed while admitting him to bail and/or that any breach of any such condition was committed by the detenu. However, at the same time it would be open for the detaining authority to apply for cancellation of bail and considering the procedure required to be followed it cannot be said that the ground considered for not resorting to that remedy, namely, that it is likely to consume time was not well founded. It cannot be said it was an irrelevant factor. May be what is argued by Mr. Shah in this regard may be another set of contentions that could have been considered but it cannot be said that this reflects non application of mind of the consideration of irrelevant factor and therefore the first ground raised on behalf of the petitioner is not available to the petitioner for getting the order of detention quashed.

6. Coming to the second ground regarding public order, it may be noted that the detaining authority has recorded a subjective satisfaction that the activities of the detenu are detrimental to public health. This being a subjective satisfaction, objective tests cannot be applied to it. In this regard the decision of Kanuji S. Zala (supra), relied upon by the learned A.G.P. Mr. Joshi, can be profitably referred to. In that case the apex court considered the decision of the apex court in case of Omprakash v. Commissioner of Police JT 1984 SC 177 and said that the observations of the court are to be understood in context of facts of that case. The apex

court took into consideration the case of Piyush Kantilal Mehta (supra) also along with the case of Omprakash as well as Rashidmiya @ Chhava Ahmedmiya Shaik v. Police Commissioner, Ahmedabad and Another JT 1989(2) SC 323 and observed as under:

"In none of the three cases relied upon by the learned counsel the point whether public order can be said to have been disturbed on the ground that the activity of the detenu was harmful to the public health arose for consideration. It appears that in those three cases, the detaining authority had not recorded such satisfaction. Moreover, in those cases the detaining authorities had referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public life was disturbed. In this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. The detaining authority has also stated that the statements of witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of the public life was disturbed in those localities for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and close their doors."

The Supreme Court ultimately confirmed the detention by dismissing the petition of the detenu. In the instant case also if the grounds of detention are perused the detaining authority has observed that the activities of the detenu are detrimental to public order and public health. The statements of witnesses indicate that the incidents narrated by the witnesses had ultimately resulted into disturbance of public order in those areas. The detenu and his companions assaulted the crowd with weapons like hockey, sword knife etc. People started running helter skelter. The shops were closed and the residents of the area had shut down their doors and windows. In these circumstances, it cannot be said that the public order was not disturbed and the recording of disturbance to public order was unreasonable or not genuine. The grounds raised in this regard therefore cannot be accepted.

7. Now coming to the question of delay, admittedly, the order was passed after about 16 or 17 days from the

date of recording of statements of the witnesses. It is required to be considered whether this lapse of 16 or 17 days can be said to be long enough to vitiate the subjective satisfaction of the detaining authority for the need to immediately prevent the petitioner from continuing his illegal and antisocial activities. It has been contended on behalf of the respondents that after the recording of the statements the sponsoring authority is required to apply mind, collect material, confirm the allegations made in the statements of the anonymous witnesses and thereafter make a proposal for the detention. The detaining authority is thereafter required to take into consideration these aspects. On the other hand it has been contended that no affidavit-in-reply is filed. The authority has not explained the time lag between the recording of statements and passing of the order and therefore non explanation would render the order invalid on account of delay.

8. Reliance is placed on decision of this High Court in Special Criminal Application No. 32 of 1980 with Special Criminal Application No. 33 and 37 of 1980 rendered by the Division Bench on 26-3-1980 and it was urged that non explanation of delay should be taken as fatal to the detention. Against this reliance is placed on decision in case of Premsingh @ Pallu Jesing Rajput v. State of Gujarat & Ors. 1999(1) GLH 648, so also in the case of Pradeep Nilkanth Paturkar v. S. Ramamurthi and others AIR 1994 SC 656 and T.A. Abdul Rahman v. State of Kerala AIR 1990 SC 225 to indicate that delay ipso facto will not be fatal to the detention. Delay is required to be explained only where there is gross and inordinate delay and there is a possibility of breaking of the causal connection between the activities alleged of the detenu and the order.

9. Considering that the statements are recorded on 26th and 27th February 199 and the order is passed on 17-3-1999 it cannot be said that there is gross and inordinate delay. Even if the last offence is considered it is dated 6-2-1999 as is revealed from the statement of anonymous witnesses. While considering delay what is required to be considered is stated by the apex court in the case of T.A.Abdul Rehman (supra) as under:

> "No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical

> test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

The apex court again in the case of Pradip Nilkanth Paturkar (supra) considered the above case along with the case of Rajendrakumar Natwarlal Shah v. State of Gujarat AIR 1988 SC 1255 in which it was held by the Apex Court that non explanation of delay between 2nd February and 28th May 1987 could not give rise to legitimate inference that the subjective satisfaction arrived by the District Magistrate was not genuine. It was also observed that it all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. The court ultimately concluded that each case is to be decided on the facts and circumstances appearing in a particular case. With this proposition if the facts of the present case are considered the last offence is dated 6-2-1999. It has come to the knowledge of the authorities concerned on 26/27-2-1999 and the order is passed within 16 days thereof on 17-3-1999. It has to be considered that once the authority comes to know about the same incident/offence, before proposing for a drastic action in the nature of preventive detention, the authority has to apply its mind, collect information and then make a proposal to the detaining authority. It appears that the detaining authority has verified the statements on 15-3-1999 and therefore the gap is further reduced by two days. In this view of the matter, the ground of delay in passing the order, canvassed on behalf of the petitioner also cannot be accepted. The unreported decision relied upon by Mr. Shah, is of a Division Bench of this Court rendered on March 26, 1980. Against this there is reported decision of another Division Bench of this court rendered in case of Osman Ali Khatki vs. Commissioner of Police Rajkot and Others, rendered on 24/25-8-1993 reported at 1994(1) GLH 512, which is later in point of rendered subsequent to 1980 and therefore they are

rendered subsequent to 1980. This court has therefore followed the ratio laid down by the Apex Court as well as the decision in case of Osman Ali Khatki (supra) by a Division Bench of this Court in 1993 against the decision cited by Mr. Shah which is of 1980.

10. In view of the above discussion it is clear that there is no gross or inordinate delay for which the detaining authority can reasonably be expected to tender explanation. In the opinion of this court, there is no undue or long delay between the prejudicial activities and the passing of the detention order and as such there is no question of examining the question whether the causal connection has been broken between the activities of the detenu and the order.

11. All the three grounds raised on behalf of the petitioner therefore cannot be accepted and are not available to the petitioner for quashing of the order of detention. The petition therefore merits dismissal and the same is dismissed. Rule discharged. No costs.

(A.L. Dave, J)